

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Reexamination of Roaming Obligations</b>	)	<b>WT Docket No. 05-265</b>
<b>of Commercial Mobile Radio Service</b>	)	
<b>Providers</b>	)	

**To: The Commission**

**REPLY COMMENTS**

SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo ("SLO"), pursuant to Section 1.415(c) of the Commission's Rules and the Commission's Memorandum Opinion and Order and Notice of Proposed Rulemaking (WT Docket Nos. 00-193 and 05-265), FCC 05-160, released August 31, 2005, hereby submits its reply comments in this proceeding.<sup>1</sup> In support hereof, the following is shown:

**Statement of Interest**

1. SLO is the licensee of the Frequency Block A cellular system serving the California 5 – San Luis Obispo Rural Service Area. In addition, Entertainment Unlimited, Inc., a commonly-controlled affiliate of SLO, is the licensee of Broadband Personal Communications Service stations in several Basic Trading Areas in the State of California. Accordingly, SLO has an interest in the Commission's resolution of the issues presented in this proceeding.

---

<sup>1</sup> By Order, Mimeo DA 05-3183, released December 14, 2005, the reply comment deadline in this proceeding was extended to January 26, 2005. Accordingly, these reply comments are timely filed.

### **Argument**

2. By way of background information, the current roaming requirement is codified in Rule Section 20.12(c), which requires Commercial Mobile Radio Service (“CMRS”) carriers to provide “mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and services to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.” The Commission has consistently interpreted this rule as requiring the provision of only manual (not automatic) roaming. Notably, this limitation does not appear in the text of the rule itself, nor is it fairly implied from the precise language used.

3. In prior proceedings involving roaming, the Commission has stated its preference to rely on market forces to assure that roaming is provided, and has indicated that regulatory intervention should only be pursued where needed to assure the development of competitive markets or to address market failure.

4. The record developed in this proceeding clearly demonstrates that, as a consequence of continuing industry consolidations, market failure has occurred in the provision of wholesale (*i.e.*, roaming) CMRS service, and that regulatory intervention is required to assure that automatic roaming service is provided, and that it is provided on a non-discriminatory basis and at just and reasonable terms and rates, as mandated by Section 201 of the Communications Act of 1934, as amended (“the Act”).

5. CMRS is a common carrier service. Section 201 of the Act plainly states that it “shall be the duty of every common carrier engaged in interstate ... communications by wire or radio to furnish such communication service upon reasonable request therefor; and ... to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes;” and that the “charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable ... .” Section 1 of the Act charges the Commission with the duty to “execute and enforce the provisions of this Act,” a duty which encompasses the authority to promulgate necessary regulations, and which requires the Commission to take action in this case by adopting regulations specifying that carriers in each market must provide automatic roaming on just, reasonable and non-discriminatory terms and cost-based rates to customers of carriers that do not provide service in that market.

6. At this juncture, it should be emphasized that that the obligations of Section 201 of the Act unambiguously fall on “every common carrier” subject to its reach, and that the aspirations and business plans of the carriers are subordinate to its requirements – whether the carriers like it or not. Indeed, the comments submitted by Nextel Partners, Inc. (“Nextel”) and Airtel Wireless, LLC (“Airtel”) demonstrate the types of “physical connections” and “through routes” that a market-based solution to automatic roaming can be expected to provide in the current consolidated market environment. Nextel advances this “market-based” solution to the roaming problems being experienced by small and regional carriers:

Consumers who choose not to buy service plans that allow for roaming are still able to easily and affordably obtain prepaid wireless services when they are off their provider's network. There are numerous prepaid wireless providers in the market, and these providers offer low-cost phones (as low as \$30 - \$50), and the ability to purchase blocks of prepaid minutes at rates of approximately \$0.20 - \$0.25 per minute. A consumer that has purchased a monthly service plan without roaming capability could very easily purchase a prepaid phone to use on those occasions when the customer travels off its carrier's network. The prepaid per-minute rate will often times be less expensive for the consumer than a provider-imposed roaming charge, and a subscriber can activate a "call-forward" feature on his or her regular phone so as not to miss any incoming calls.<sup>2</sup>

Cingular Wireless, LLC also endorses this cumbersome and Byzantine approach.<sup>3</sup>

7. Nextel's market-based solution is patently absurd. But it is not nearly as bad as the market-based solution foisted on Airtel, which recounts its experience as follows:

Airtel was unable to achieve even that level of roaming rights with Sprint Nextel – despite the fact that Sprint Nextel does not provide iDEN service at all in Montana, the only market in which Airtel operates. The arrangement Airtel was able to negotiate allows the Company to purchase prepaid service as a Sprint Nextel dealer and thereby provide Sprint Nextel SIM cards to the Company's subscribers when they travel outside Montana. Each subscriber has to remove its Airtel SIM card when it leaves the state, replace it with a Sprint Nextel card, and remember to reverse the process when the subscriber returns to the state. It is not even clear that this constitutes "roaming" in the sense of this proceeding as subscribers are not able to retain their Airtel phone number when operating outside the state, but are assigned a different Sprint Nextel number. This arrangement is even more primitive and cumbersome than the manual roaming roaming approach defined in the [*Notice of Proposed Rulemaking*]. It is reflective of the parties' respective market power and bargaining positions. Moreover, AIRPEAK never received a response to its requests to initiate negotiation of a domestic roaming agreement.<sup>4</sup>

Thus, under the Nextel solution, a subscriber departing on a five-city business trip over a two-week period can simply buy a separate prepaid phone and service plan in each city; and in the Airtel scenario the subscriber can fumble his or her way through the process of disassembling the phone to insert the appropriate SIM card (assuming the subscriber has

---

<sup>2</sup> Nextel Comments, pg. 10.

<sup>3</sup> Cingular Comments, pp. 14-15;

even remembered to bring it along). These market-based solutions hark back to the days of late 19<sup>th</sup> Century and early 20<sup>th</sup> Century wireline telephony when multiple carriers served the same city, but where a customer desiring comprehensive service was required to subscribe to the service offerings of each because the technology did not then exist to connect the separate systems together.

8. Clearly, the practices described above do not constitute the physical connections and through routes contemplated by Section 201 of the Act, but they are the types of “market-based solutions” that are (or will be) all too common in the current non-competitive wholesale CMRS marketplace. They stand as clear evidence of market failure in the provision of wholesale CMRS – and this market failure is not good for consumers. Consumers expect to receive, and have a right to receive, seamless CMRS service as they travel around the country. The adoption of a mandatory automatic roaming requirement will promote this objective, while the failure to adopt such a requirement will produce a result that fails to protect customers of non-nationwide carriers.

9. Of all the comments submitted, SLO submits that those filed by Southern Communications Service, Inc. d/b/a SouthernLINC Wireless, Leap Wireless International, Inc. and MetroPCS Communications, Inc. offer solutions to the current market failure that are the easiest, most sensible, and most accurate to administer. The first two sets of comments are supported by detailed economic studies that provide clear empirical evidence of the current state of market failure in the CMRS wholesale market. While each of the three commenters offers a slightly different method for calculating a cost-based rate for the provision of automatic roamer service, any of the three methods

---

<sup>4</sup> AIRPEAK Communications, LLC & Airtel Wireless, LLC Comments, pg. 7.

would remedy the inequities of the current situation and would produce sufficiently accurate results to withstand judicial review.

10. The Commission's decision in this proceeding will determine the future of the CMRS industry. If the Commission declines to act to control the overwhelming market power of the national carriers in the provision of roaming services, no carriers but national carriers will survive. The loss for consumers will be substantial. It is the small, independent companies like SLO, MetroPCS and LEAP that offer wireless services in direct competition with existing wireline companies. The large national wireless carriers, with the exception of T-Mobile, have substantial wireline operations to protect. Accordingly, they are unlikely to provide the same kind of options that independent carriers do. Once the CMRS industry has been reduced to a few large carriers, consumers will face higher rates and fewer choices with the large carriers dividing markets and moving in conscious parallelism. When the large carriers have eliminated any real competition, only a regime of full regulation will offer protection to consumers. By taking action now to provide for a reasonable system of automatic roaming consistent with statutory common carrier obligations, the Commission can ensure that it does not have to implement full regulation of the CRMS marketplace in the future to protect American consumers.

**WHEREFORE**, SLO requests that the relief requested herein be granted.

Respectfully submitted,

**SLO Cellular, Inc. d/b/a Cellular  
One of San Luis Obispo**

SLO Cellular, Inc. d/b/a  
Cellular One of San Luis Obispo  
6707 Democracy Boulevard  
Suite 905  
Bethesda, Maryland 20817  
Tel: 301-897-2700  
FAX: 301-897-1500

By:   
Stephen Kaffee  
Chief Executive Officer

Dated: January 26, 2006